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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

ValleyLife, an Arizona corporation,

Defendant.

Case No.:

COMPLAINT

(JURY TRIAL DEMAND)

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 ("ADA") as amended by the ADA Amendments Act of 2008 and Title I of the Civil Rights Act of 1991 against Defendant ValleyLife, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Glenn Stephens and a class of individuals with disabilities, including but not limited to Ibrahim Mansaray, Sanfee Dorley, Ashley Hupcik, Barbara Davis, Christiana Mitchell, and Anita Yavo, and other aggrieved individuals, who were adversely affected by such practices. The Equal Employment Opportunity Commission ("EEOC" or "the Commission") alleges that Valley Life terminated the employment of Glenn Stephens and a class of qualified individuals with disabilities because of disability rather than providing

1 reasonable accommodation, and further, discriminated against Glenn Stephens and a class
2 of qualified individuals with disabilities by maintaining an inflexible 12-month leave
3 policy which did not provide for reasonable accommodation and which instead provided
4 for termination of employment, all in violation of the ADA. In addition, the Commission
5 alleges that Defendant commingled medical records with personnel records and failed to
6 maintain these medical records confidential.

7 **JURISDICTION AND VENUE**

8 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
9 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a)
10 of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference 42 U.S.C. Section
11 706(f)(1), (3) 42 U.S.C. §2000e-5(f)(1), (3), and pursuant to Section 102 of the Civil
12 Rights Act of 1991, 42 U.S.C. §1981A.

13 2. The employment practices alleged to be unlawful were and are being
14 committed within the jurisdiction of the United States District Court for the District of
15 Arizona.

16 **PARTIES**

17 3. Plaintiff EEOC is the agency of the United States of America charged with
18 the administration, interpretation, and enforcement of Title I of the ADA and is
19 expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. §
20 12117(a), which incorporates by reference Section 706(f)(1), (3), 42 U.S.C. § 2000e-
21 5(f)(1), (3).

22 4. At all relevant times, Defendant ValleyLife, an Arizona corporation, has
23 continuously been and is now doing business in the State of Arizona and has
24 continuously had at least fifteen (15) employees.

25 5. At all relevant times, Defendant has continuously been an employer
26 engaged in an industry affecting commerce under Section 101(5) of the ADA, 42
27 U.S.C. § 12111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which
28 incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g)

1 and (h).

2 6. At all relevant times, Defendant has been a covered entity under Section
3 101(2) of the ADA, 42 U.S.C. § 12111(2).

4 **GENERAL ALLEGATIONS**

5 **I. Conditions Precedent**

6 7. More than thirty days prior to the institution of this lawsuit, Glenn
7 Stephens filed a charge of discrimination with the EEOC alleging violations of Title I of
8 the ADA by Defendant.

9 8. The EEOC provided Defendant with notice of the charge of
10 discrimination.

11 9. The EEOC investigated the charge of discrimination.

12 10. Based on evidence obtained during the investigation, the EEOC issued a
13 determination finding reasonable cause to believe that Defendant engaged in certain
14 unlawful employment practices identified in the determination.

15 11. The EEOC's determination included an invitation for Defendant to join the
16 Commission in informal methods of conciliation in an attempt to eliminate the alleged
17 unlawful employment practices.

18 12. Defendant agreed to participate with the EEOC in this informal
19 conciliation process.

20 13. The EEOC and Defendant were unable to reach an agreement through the
21 conciliation process.

22 14. The EEOC sent notice to the Defendant that conciliation efforts had failed.

23 15. All conditions precedent to the institution of this lawsuit have been
24 fulfilled.

25 **II. Defendant ValleyLife, Inc.**

26 16. Since at least October 2009, Defendant has engaged in unlawful
27 employment practices in violation of § 102 of Title I of the ADA, 42 U.S.C. § 12112.

28 17. Defendant is a local company with numerous locations throughout the

1 Phoenix metropolitan area in Arizona.

2 18. Defendant is a non-profit organization that serves the developmentally
3 disabled.

4 19. Defendant is headquartered in Phoenix, Arizona.

5 **STATEMENT OF CLAIMS**

6 20. Since at least October 2009, Defendant has terminated the employment of
7 qualified individuals with disabilities because of disability, rather than providing
8 reasonable accommodation in violation of Sections 102(a) and (b)(5)(A) of Title I of the
9 ADA, 42 U.S.C. §§ 12112(a) and (b)(5)(A).

10 21. Since at least October 2009, Defendant has maintained an inflexible leave
11 policy that does not provide for reasonable accommodation of qualified individuals with
12 disabilities and which instead provides for termination of their employment, in violation
13 of Sections 102(a) and (b)(5)(A) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and
14 (b)(5)(A).

15 22. Since at least October 2009, Defendant has maintained an inflexible leave
16 policy under which employees are discharged upon exhausting available paid time off
17 and/or any unpaid leave to which they are eligible under the Family Medical Leave Act
18 (FMLA). Defendant uses its inflexible leave policy as a qualification standard,
19 employment test or other selection criteria that screens out or tends to screen out
20 individuals with disabilities and is not job-related and consistent with business necessity
21 in violation of Sections 102(a) and 102(b)(6), 42 U.S.C. §§ 12112(a) and 112(b) (6).

22 23. Since at least October 2009, Defendant's method of administering its
23 inflexible leave policy has the effect of discriminating on the basis of disability by
24 denying qualified individuals with disabilities reasonable accommodations, and instead
25 terminating their employment. Defendant's method of administering its inflexible leave
26 policy is not job-related and consistent with business necessity, in violation of Sections
27 102(a) and 102(b)(3)(A), 42 U.S.C. §§ 12112(a) and 112(b)(3)(A).

28 24. Since at least October 2009, Defendant has violated Section 102(d)(3)(B)

1 of the ADA by commingling medical records in employee personnel files and failing to
2 maintain these medical records confidential.

3 25. Each individual for whom the EEOC seeks relief in this action is a qualified
4 individual with a disability who could perform the essential duties of the job he or she
5 had or desired with or without a reasonable accommodation. Because disabilities, and
6 the reasonable accommodations appropriate for particular individuals with disabilities,
7 may vary significantly, the reasonable accommodations which Defendant should have
8 made available to class members to permit them to perform the essential functions of the
9 jobs they held or desired (with or without reasonable accommodation) would not have
10 all been the same. The reasonable accommodations would have varied from class
11 member to class member on an individual basis, as determined through an interactive
12 process between ValleyLife and the individual class members. However, rather than
13 engage in that interactive process and reasonably accommodate these class members,
14 without undue hardship to itself, ValleyLife terminated the class members' employment.

15 26. For example, Glenn Stephens is a qualified individual with a disability
16 who, throughout his employment with Defendant, could perform the essential functions
17 of his job as a residential supervisor with or without an accommodation. Stephens began
18 working for ValleyLife in 1998 and worked for ValleyLife for over a decade before
19 being forced out in October 2009. His position at the time of the events described in this
20 complaint was as a residential supervisor.

21 37. Stephens satisfactorily performed the essential functions of his job during
22 the time that he worked for Defendant.

23 38. In October 2009, Stephens became aware that he would need heart surgery
24 to correct physical damage he incurred as a result of an earlier work-related injury. His
25 sternum or breastbone sustained a serious blow during this incident and is now unstable.

26 39. Stephens' unstable sternum is an impairment that substantially limits the
27 major life activities of lifting, working, and the operation of the musculoskeletal bodily
28 function .

1 40. At all relevant times, Stephens was a qualified individual with a disability
2 as defined by the ADA.

3 41. In October 2009, Stephens notified Defendant of his medical condition and
4 his need to undergo surgery.

5 42. Defendant investigated Stephens' eligibility for leave under the FMLA, 29
6 U.S.C. § 2601 *et seq.*

7 43. The FMLA entitles eligible employees of covered employers to up to
8 twelve (12) weeks of job-protected, unpaid leave during any 12-month period, for care
9 of the employee's own serious health condition.

10 44. On or about October 8, 2009, Defendant received a physician statement
11 indicating that Mr. Stephens had certain physical restrictions, including no lifting, but
12 that those restrictions would be subject to reevaluation following his surgery.

13 45. On or about October 15, 2009, Defendant received a physician statement
14 from Cardiovascular Consultants, Ltd., again indicating that Stephens had certain
15 physical restrictions but that those restrictions would be subject to reevaluation
16 following his surgery.

17 46. Defendant determined that Stephens had exhausted his FMLA entitlement
18 for the certification period.

19 47. On or about October 16, 2009, Defendant notified Stephens that it would
20 allow him to work on light-duty until his surgery date but then would require him to
21 resign his position because Stephens had exhausted his FMLA entitlement for the
22 certification period.

23 48. Stephens asked Nancy Glossa, Defendant's human resources manager, if he
24 could take unpaid leave instead. Glossa informed him that Defendant does not allow for
25 unpaid leave in excess of an employee's FMLA entitlement.

26 49. Defendant did not initiate or engage with Stephens in any interactive
27 process to identify potential needed accommodations, including but not limited to
28 additional unpaid leave.

1 50. The reasonable accommodations proposed by Stephens would not have
2 imposed an undue hardship on the operation of Defendant's business.

3 51. Rather than accommodating Stephen's request for additional unpaid leave
4 needed for medical treatment of his disability, Defendant terminated Stephens'
5 employment on or about October 30, 2009.

6 52. Defendant discharged Stephens, pursuant to its policy described in
7 paragraph 21, rather than accommodating him by extending his leave, offering him other
8 reasonable accommodations, or returning him to work in an available position which he
9 could have performed, in violation of Sections 102(a) and (b)(5)(A) of Title I of the
10 ADA, 42 U.S.C. §§ 12112(a) and (b)(5)(A).

11 53. By discharging Stephens in accord with the Company's inflexible leave
12 policy and the method in which it was administered, the Company imposed a job
13 retention qualification standard that screened out an individual with a disability and that
14 had the effect of discriminating on the basis of disability which was not job-related for
15 the position or consistent with business necessity in violation of Sections 102(a) and
16 102(b)(3)(A) and (b)(6) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and
17 12112(b)(3)(A) and (b)(6).

18 54. Another example is Christiana Mitchell who was a qualified individual with
19 a disability who, with or without reasonable accommodation, could perform the essential
20 functions of her job with Defendant as a direct support professional. Mitchell began
21 working for ValleyLife in 2008, and was discharged in 2011. The position she held at
22 the time of the events described in this complaint was direct support professional.

23 55. Mitchell satisfactorily performed the essential functions of her job during
24 the time she worked for Defendant.

25 56. In November 2010, Mitchell fractured her foot. At the time of the events
26 described in this complaint, Mitchell's fractured foot was an impairment that
27 substantially limited the major life activities of walking and working.

28 57. At all relevant times, Mitchell was a qualified individual with a disability as

1 defined by the ADA.

2 58. In November 2010, Mitchell notified Defendant of her medical condition
3 and her need for leave.

4 59. Mitchell took 12 weeks FMLA leave from November 2010 to January
5 2011.

6 60. Defendant contacted Mitchell in January 2011, prior to the expiration of her
7 FMLA leave, and asked when she could return to work.

8 61. Mitchell informed Defendant in January 2011, that she was to be examined
9 by her orthopedic surgeon on or about January 14, 2011, and would then provide
10 Defendant with an expected return to work date.

11 62. Defendant determined that Mitchell had exhausted her FMLA entitlement
12 for the certification period.

13 63. Defendant did not initiate or engage with Mitchell in any interactive
14 process to identify potential needed accommodations, including but not limited to
15 additional unpaid leave.

16 64. Defendant discharged Mitchell on or about January 6, 2011, pursuant to its
17 policy described in paragraph 21, rather than accommodating her by extending her leave,
18 offering her other reasonable accommodations, or returning her to work in an available
19 position which she could have performed, in violation of Sections 102(a) and (b)(5)(A)
20 of Title I of the ADA, 42 U.S.C. §§ 12112(a) and (b)(5)(A).

21 65. By discharging Mitchell in accord with the Company's inflexible leave
22 policy and the method in which it was administered, the Company imposed a job
23 retention qualification standard that screened out an individual with a disability and that
24 had the effect of discriminating on the basis of disability which was not job-related for
25 the position or consistent with business necessity in violation of Sections 102(a) and
26 102(b)(3)(A) and (b)(6) of Title I of the ADA, 42 U.S.C. §§ 12112(a) and
27 12112(b)(3)(A) and (b)(6).

28 66. Another example is Ashley Hupcik, who was a qualified individual with a

1 disability who, with or without reasonable accommodation, could perform the essential
2 functions of her job with Defendant as a direct support professional. Hupcik began
3 working for ValleyLife in July 2010, and was discharged in September 2010. The
4 position she held at the time of the events described in this complaint was direct support
5 professional.

6 67. Hupcik satisfactorily performed the essential functions of her job during the
7 time she worked for Defendant.

8 68. On or about July 2010, Hupcik was injured during performance of her
9 duties as a direct support professional for Defendant. This injury resulted in separation
10 of the placenta from Hupcik's uterine wall.

11 69. On or about September 1, 2010, Hupcik informed Defendant that she was
12 pregnant.

13 70. Hupcik took leave on or about September 2, 2010, due to the pregnancy
14 complication described in paragraph 68, and returned to work for Defendant on or about
15 September 14, 2010.

16 71. Upon returning to work on or about September 14, 2010, Hupcik informed
17 Defendant that her doctor restricted her from lifting greater than 20 pounds due to the
18 pregnancy complication that resulted from the injury described in paragraph 68.

19 72. At the time of the events described in this complaint, Hupcik's pregnancy
20 complication was an impairment that substantially limited the major life activity of
21 lifting.

22 73. Defendant did not initiate or engage with Hupcik in any interactive process
23 to identify potential needed accommodations, including but not limited to unpaid leave.

24 74. Defendant discharged Hupcik on or about September 14, 2010, rather than
25 accommodating her by providing unpaid leave, offering her other reasonable
26 accommodations, or returning her to work in an available position which she could have
27 performed, in violation of Sections 102(a) and (b)(5)(A) of Title I of the ADA, 42
28 U.S.C. §§ 12112(a) and (b)(5)(A).

1 75. The unlawful employment practices complained of in the foregoing
2 paragraphs are continuous and ongoing.

3 76. The effect of the policies and practices complained of in the paragraphs
4 above was to deprive Stephens and a class of qualified individuals with disabilities of
5 equal employment opportunities and otherwise adversely affect their status as employees
6 because of their disabilities.

7 77. The unlawful employment practices complained of in the foregoing
8 paragraphs were and are intentional.

9 78. The unlawful employment practices complained of in the foregoing
10 paragraphs were done with malice or with reckless indifference to the federally protected
11 rights of a class of qualified individuals with disabilities.

12 **FIRST CLAIM FOR RELIEF**

13 **Failure to Provide Reasonable Accommodation**

14 **42 U.S.C. §§ 12112(a) and (b)(5)(A)**

15 79. EEOC reasserts and incorporates by reference all of the foregoing
16 allegations.

17 80. Glenn Stephens is a qualified individual with a disability.

18 81. Defendant failed to make reasonable accommodation to the physical and
19 mental limitations of Stephens and a class of other qualified employees with disabilities,
20 in violation of 42 U.S.C. §§ 12112(a) and (b)(5)(A).

21 82. Defendant failed to initiate or engage with Stephens, and a class of other
22 qualified employees with disabilities, to identify the precise limitations resulting from
23 their disabilities and potential accommodations that could overcome those limitations.

24 83. The effect of the practices complained of in the paragraphs above has been
25 to deprive Stephens and a class of individuals with disabilities of equal employment
26 opportunities and otherwise adversely affect their status as employees because of their
27 disabilities.

28 84. The unlawful employment practices complained of in the foregoing

1 paragraphs were and are intentional.

2 85. The unlawful employment practices complained of in the foregoing
3 paragraphs were and are done with malice or with reckless indifference to the federally
4 protected rights of Stephens and a class of individuals with disabilities.

5 86. The unlawful employment practices complained of in the foregoing
6 paragraphs are continuous and ongoing.

7 **SECOND CLAIM FOR RELIEF**

8 **Discriminatory Discharge**

9 **42 U.S.C. §§ 12112(a)**

10 87. EEOC reasserts and incorporates by reference all of the foregoing
11 allegations.

12 88. Glenn Stephens is a qualified individual with a disability.

13 89. Defendant terminated Stephens, and a class of other qualified employees
14 with disabilities, because of their disabilities and/or because they had physical or mental
15 limitations requiring reasonable accommodation in violation of 42 U.S.C. § 12112(a)
16 and 12112(b)(5)(A).

17 90. Several other qualified employees with disabilities were compelled to
18 resign their positions and/ or were terminated due to the intolerable conditions created
19 by Defendant's refusal to provide reasonable accommodations and its adherence to its
20 inflexible leave policy or practice.

21 91. The unlawful employment practices complained of in the foregoing
22 paragraphs were and are intentional.

23 92. The unlawful employment practices complained of in the foregoing
24 paragraphs were and are done with malice or with reckless indifference to the federally
25 protected rights of Stephens and the other aggrieved individuals.

26 93. The unlawful employment practices complained of in the foregoing
27 paragraphs are continuous and ongoing.

28

THIRD CLAIM FOR RELIEF

**Use of Standards, Criteria, or Methods of Administration that Have the Effect of
Discrimination on the Basis of Disability**

Defendant's Inflexible Leave Policy

42 U.S.C. §§ 12112(a) and (b)(3)

94. EEOC reasserts and incorporates by reference all of the foregoing allegations.

95. Defendant's method of administering its inflexible leave policy, has the effect of discrimination on the basis of disability and is not job-related and consistent with business necessity, in violation of 42 U.S.C. § 12112(a) and 12112(b)(3)(a) of Title I of the ADA, 42 U.S.C. § 12112(a) and 12112(b)(3)(A).

96. The effect of the inflexible leave policy complained of in the foregoing paragraphs has been to deprive Stephens and a class of qualified individuals with disabilities of equal employment opportunities and otherwise adversely affect their status as employees because of their disabilities.

97. The unlawful inflexible leave policy complained of in the foregoing paragraphs is continuous and ongoing.

FOURTH CLAIM FOR RELIEF

**Use of Qualification Standards or Other Selection Criteria that Screen Out or Tend
to Screen Out Individuals with Disabilities**

Defendant's Inflexible Leave Practice or Policy

42 U.S.C. §§ 12112(a) and (b)(6)

98. EEOC reasserts and incorporates by reference all of the foregoing allegations.

99. Defendant uses its inflexible leave practice or policy as a qualification standard or selection criteria that screens out or tends to screen out a class of individuals with disabilities and is not job-related and consistent with business necessity, in violation of Sections 102(a) and 102 (b)(6), 42 U.S.C. §§ 12112(a) and 12112(b) (6).

1 100. The effect of the inflexible leave practice or policy complained of in the
2 foregoing paragraphs has been to deprive Stephens and a class of qualified individuals
3 with disabilities of equal employment opportunities and otherwise adversely affect their
4 status as employees because of their disabilities.

5 101. The unlawful inflexible leave policy complained of in the foregoing
6 paragraphs is continuous and ongoing.

7 **FIFTH CLAIM FOR RELIEF**

8 **Improper Commingling of Medical Records with Employee Personnel Files and**
9 **Failure to Treat Medical Documents as Confidential Records**

10 **42 U.S.C. §§ 12112(d)(4)(C) and (d)(3)(B-C)**

11 102. EEOC reasserts and incorporates by reference all of the foregoing
12 allegations.

13 103. Defendant has violated Section 102(d)(3)(B) of the ADA by commingling
14 medical records in employee personnel files and failing to keep such medical records
15 confidential as required by statute.

16 104. The effect of this failure has been to improperly divulge confidential
17 medical information regarding a group of aggrieved individuals and allow unauthorized
18 access to this information.

19 105. The unlawful co-mingling of confidential medical records with non-
20 medical personnel records and improper disclosure of private medical information was
21 and is intentional.

22 106. The unlawful co-mingling of confidential medical records with non-
23 medical personnel records and improper disclosure of private medical information was
24 and is being done with malice or with reckless indifference to the federally protected
25 rights of Mr. Stephens and the other aggrieved individuals.

26 107. The unlawful co-mingling of confidential medical records with non-
27 medical personnel records and improper disclosure of private medical information is
28 continuous and ongoing.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from discriminating against employees because of a disability.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for qualified individuals with disabilities, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to cease utilizing its inflexible leave policy in a manner that denies qualified individuals with disabilities reasonable accommodation that would not cause undue hardship.

D. Order Defendant to cease utilizing its inflexible leave policy as a qualification standard, employment test or other selection criteria that screens out or tends to screen out individuals with disabilities and is not job-related and consistent with business necessity.

E. Order Defendant to cease administering its inflexible leave policy using a method that is not job-related and consistent with business necessity and that has the effect of discriminating on the basis of disability by denying qualified individuals with disabilities reasonable accommodations, and instead terminating their employment.

F. Order Defendant to make whole Stephens and a class of qualified individuals with disabilities by providing appropriate backpay and lost benefits with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to the reinstatement of Stephens and other aggrieved individuals, or front pay in lieu thereof.

G. Order Defendant to make whole Stephens and a class of qualified individuals with disabilities by providing compensation for past and future pecuniary

1 losses resulting from the unlawful employment practices described in the paragraphs
2 above, including but not limited to relocation expenses, job search expenses, and
3 medical expenses, in amounts to be determined at trial.

4 H. Order Defendant to make whole Stephens and a class of qualified
5 individuals with disabilities by providing compensation for past and future nonpecuniary
6 losses resulting from the unlawful employment practices described in the paragraphs
7 above, including but not limited to emotional pain, suffering, inconvenience, loss of
8 enjoyment of life, humiliation, loss of credit standing, and stress, in amounts to be
9 determined at trial.

10 I. Order Defendant to pay Stephens and a class of qualified individuals with
11 disabilities, punitive damages for its malicious or reckless conduct described in the
12 paragraphs above, in amounts to be determined at trial.

13 J. Grant such further relief as this Court deems necessary and proper in the
14 public interest.

15 K. Award the EEOC its costs of this action.

16 **JURY TRIAL DEMAND**

17 The Commission requests a jury trial on all questions of fact raised by its
18 Complaint.

19 RESPECTFULLY SUBMITTED this 25th day of February, 2015.

20
21 MARY JO O'NEILL
22 Regional Attorney

23 HILLARY K. VALDERRAMA
24 Supervisory Trial Attorney

25 /s/ Wasan Awad
26 WASAN AWAD
27 Trial Attorney

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